

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TERRY PEARSON,

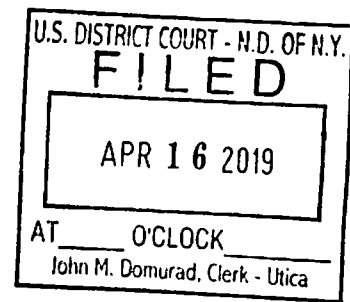
*Plaintiff,*

-against-

M. BROCKLEY,

*Defendant.*

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STIPULATION OF  
DISCONTINUANCE

Docket No.: 15-cv-01427  
(DNH/DJS)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, Plaintiff, Terry Pearson DIN #07A0716, and Letitia James, Attorney General of the State of New York, Brian W. Matula, Assistant Attorney General, of counsel, appearing for Defendant Michael Brockley, the Parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the Parties to this case or any other parties:

1. Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff hereby discontinues this action with prejudice and without damages, costs, interest, attorney's fees or payment of any monetary amount except for those amounts specifically set forth in Paragraph 5 of this Stipulation and Order of Discontinuance ("Stipulation") under the conditions described in Paragraph 4 of this Stipulation, as against Defendant Michael Brockley and discharges and releases Defendant Michael Brockley, and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which

relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation, appeal or claim against the Defendant and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned actions, or any results of the aforementioned facts, circumstances or incidents, except as specifically provided in Paragraph 10 of this Stipulation. Defendants also agree to not assert claims for costs, expenses and/or attorney's fees or any other claims arising out of this matter and Defendants acknowledge that this Stipulation constitutes the full and final resolution of all matters related to this litigation.

2. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. The Parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This settlement does not constitute a determination of, or an admission by, any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for or an agreement by the Parties to any generally applicable policy or procedure in the future.

5. Following the execution of this Stipulation, and its being ordered by the Court, Plaintiff shall be paid the sum of One Hundred and Seventy Thousand Dollars (\$170,000.00) in full settlement of any and all claims, which amount includes all sums to which Plaintiff is entitled, including but not limited to damages, costs, and attorney's fees. Plaintiff's settlement shall be paid as follows: \$85,000 payable to "Terry Pearson"; \$85,000 payable to "The Law Office of Fred

Lichtmacher, P.C.” Plaintiff’s check for \$85,000 will be mailed to Five Points Correctional Facility, Caller Box 400, State Route 96, Romulus, NY 14541, for deposit in Plaintiff’s inmate account, or, in the event Plaintiff is transferred prior to the issuance of the check, to the correctional facility in which he is incarcerated at the time the check is mailed. Plaintiff’s attorney’s check shall be mailed to The Law Office of Fred Lichtmacher, P.C., Attn: Fred B. Lichtmacher, Esq., 116 W. 23<sup>rd</sup> Street – Suite 500, New York, New York 10011.

6. Payment of the amount specified in Paragraph 5 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law, and upon Plaintiff and Plaintiff’s counsel signing and returning a “Standard Voucher” which will be mailed by agents of the Defendant responsible for the administrative processing of settlement paperwork.

7. Payment of the amount of \$85,000 payable to Fred B. Lichtmacher, Esq. is conditioned upon the delivery of billing records to Defendant’s counsel, establishing that his attorney’s fees and costs in prosecuting this case met or exceeded the \$85,000 payable to him pursuant to this Stipulation.

8. Payment of the amount referenced in paragraph 5 will be made within one hundred and twenty (120) days after the approval of this Stipulation by the Court and receipt by counsel of a copy of the so-ordered Stipulation, unless the provisions of Chapter 62 of the Laws of 2001 apply to the Plaintiff and the payment hereunder constitutes “funds of a convicted person” under the Son of Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

9. In the event that the terms of Paragraphs 6 and 7 are satisfied, but payment is not made within the periods set forth in paragraph 8, interest shall begin to accrue on the outstanding

principal balance at the statutory rate on the 121st day after court approval or the 151st day after court approval if the provisions of Chapter 62 of the Laws of 2001 apply to Plaintiff.

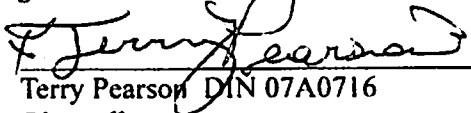
10. This Stipulation shall be null and void if the approvals referred to in paragraph 6 are not obtained, and this action shall then be placed back on the active docket without prejudice.

11. Plaintiff represents and warrants that he is not a Medicare recipient, that he has never been on Medicare or Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next thirty (30) months.

12. This Stipulation may be executed in counterparts.

13. The foregoing constitutes the entire agreement of the Parties.

Dated: April 15, 2019  
Romulus, New York

  
Terry Pearson DIN 07A0716  
*Plaintiff*  
Five Points Correctional Facility  
Caller Box 400  
State Route 96  
Romulus, New York 14541

Dated: April \_\_, 2019  
New York, New York

\_\_\_\_\_  
Fred B. Lichtmacher, Esq.  
*Attorney for Plaintiff*  
The Law Office of Fred Lichtmacher,  
116 W. 23<sup>rd</sup> Street – Suite 500  
New York, New York 10011

Dated: April \_\_, 2019  
Albany, New York

LETITIA JAMES  
Attorney General of the State of New York  
*Attorney for Defendant*  
The Capitol, Albany, New York 12224-0341

By: \_\_\_\_\_  
Brian W. Matula  
Assistant Attorney General, Of Counsel  
Bar Roll No. 511717  
(518) 776-2599  
brian.matula@ag.ny.gov

principal balance at the statutory rate on the 121st day after court approval or the 151st day after court approval if the provisions of Chapter 62 of the Laws of 2001 apply to Plaintiff.

10. This Stipulation shall be null and void if the approvals referred to in paragraph 6 are not obtained, and this action shall then be placed back on the active docket without prejudice.

11. Plaintiff represents and warrants that he is not a Medicare recipient, that he has never been on Medicare or Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next thirty (30) months.

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*Plaintiff*  
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Romulus, New York 14541

Dated: April 15, 2019  
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Fred B. Lichtmacher, Esq.  
*Attorney for Plaintiff*  
The Law Office of Fred Lichtmacher,  
116 W. 23<sup>rd</sup> Street – Suite 500  
New York, New York 10011

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Attorney General of the State of New York  
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10. This Stipulation shall be null and void if the approvals referred to in paragraph 6 are not obtained, and this action shall then be placed back on the active docket without prejudice.

11. Plaintiff represents and warrants that he is not a Medicare recipient, that he has never been on Medicare or Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next thirty (30) months.

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13. The foregoing constitutes the entire agreement of the Parties.

Dated: April \_\_, 2019  
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*Plaintiff*  
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State Route 96  
Romulus, New York 14541

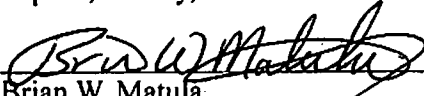
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*Attorney for Plaintiff*  
The Law Office of Fred Lichtmacher,  
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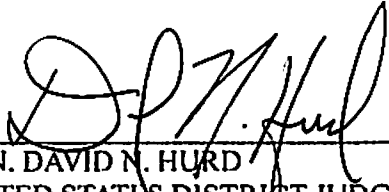
Dated: April 15, 2019  
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Attorney General of the State of New York  
*Attorney for Defendant*  
The Capitol, Albany, New York 12224-0341

By:   
Brian W. Matula  
Assistant Attorney General, Of Counsel  
Bar Roll No. 511717  
(518) 776-2599  
brian.matula@ag.ny.gov

**SO ORDERED.**

Dated: April 16, 2019  
Utica, New York

  
\_\_\_\_\_  
HON. DAVID N. HURD  
UNITED STATES DISTRICT JUDGE